

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SENIOR MIDWEST DIRECT, INC.,
doing business as Jetson Mailers,

Plaintiff,

-against-

PUBLISHERS CLEARING HOUSE
LLC,

Defendant.

Case No. _____

Plaintiff demands trial by jury.

COMPLAINT

Plaintiff Senior Midwest Direct, Inc., doing business as Jetson Mailers (“Jetson Mailers”), by its undersigned counsel, for its complaint against Defendant Publishers Clearing House LLC (“PCH”), states as follows:

Nature of Action

1. In this diversity action, Jetson Mailers, is a leading provider of nationwide direct mail production and fulfillment services, seeks to recover for breach of contract due to PCH’s failure to meet its contractual requirement to provide a minimum number of mailing packages for 2022 and 2023 to Jetson Mailers.

2. Jetson Mailers entered into a contract for its services with PCH that required Jetson Mailers to maintain a weekly minimum capacity to provide mail production and fulfillment services for PCH. This had two components: (1) Jetson Mailers had to ensure that it would have available machinery to handle late orders from PCH each week; and (2) Jetson Mailers needed to have available staffing on a weekly basis to handle any last-minute orders from PCH. Jetson Mailers’s commitment to handle this minimum quantity hampered Jetson Mailers’s ability to enter into large, long-term contracts for other clients. Instead, Jetson Mailers could not seek out other

long-term mail production contracts unless it knew that it could meet the terms of its PCH contract. Although maintaining this capacity for PCH limited Jetson Mailers's business, Jetson Mailers nonetheless accepted the PCH business because PCH guaranteed a minimum threshold of mailing packages on an annual basis to Jetson Mailers.

The Parties and Jurisdiction

3. Jetson Mailers is an Illinois corporation with its principal place of business in Illinois.

4. PCH is a limited liability company, the sole member of which is Publishers Clearing House, Inc. Publishers Clearing House, Inc. is a New York corporation with its principal place of business in New York.

5. Jetson Mailers and PCH are citizens of different states.

6. The Complaint seeks to recover damages (exclusive of interest and costs) in an amount in excess of \$75,000.

7. Because there is complete diversity of citizenship between Jetson Mailers and PCH and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000, this Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

The October 2017 Letter Agreement

8. As of October 2017, Jetson Mailers had been providing lettershop services to PCH for a variety of mailing programs for several years, but the prior agreement was coming to an end.

9. PCH and Jetson Mailers entered into a Letter Agreement dated October 23, 2017 under which Jetson Mailers would continue to provide lettershop services to PCH for first class and third class PCH mailing programs, including a Canadian mailing program during the term of the agreement. The Letter Agreement is attached as Exhibit A.

10. The Letter Agreement specified that the Term would commence on November 17, 2017, and terminate on November 16, 2020.

11. Under the Letter Agreement, PCH agreed to provide a certain minimum amount of mailing packages to Jetson Mailers for each year of the term and, in turn, Jetson Mailers agreed that it would maintain the capacity to fulfill that minimum capacity for each year.

12. Specifically, PCH committed that it would furnish Jetson Mailers at least 225,000,000 mailing packages for each year.

The Parties Amend the Letter Agreement

13. PCH and Jetson Mailers entered into a First Amendment to Contract dated as of October 30, 2020, which amended the Letter Agreement. A copy of the First Amendment to Contract is attached as Exhibit B.

14. Among other things the Parties amended the Letter Agreement to extend its terms by another three years to November 16, 2023. (Ex. B, ¶ 4)

15. The Parties also amended the prior description of Jetson Mailers's services to state:

Jetson shall be a provider of lettershop services to PCH for first class and standard promotional PCH mailing programs during the Term (as hereinafter defined) of this Agreement.

(Ex. B, ¶ 1)

16. The parties also amended one of the existing provisions to include a new warranty governing Jetson Mailers's performance under the First Amendment:

Jetson represents and warrants that it shall also have and maintain, at all times during the Term of this Agreement, the capacity to insert one million two hundred thousand (1,200,000) PCH Selective Inserting mailing packages per a five (5) day work week, and to match affix one million two hundred fifty thousand (1,250,000) PCH mailing packages per a five (5) day work week.

(Exhibit B, ¶ 2)

17. The parties also agreed to reduce PCH's minimum commitment under the Amended Agreement:

The reference to "at least two hundred twenty-five million (225,000,000) mailing packages" in the first sentence of Paragraph 3(b) is hereby deleted and is replaced with "at least two hundred ten million (210,000,000) mailing packages".

(Exhibit B, ¶ 3)

18. The parties deleted the prior Exhibit A to the Letter Agreement (Lettershop Pricing Grid) and replaced it with a new Lettershop Pricing Grid. (Exh. B, ¶ 3)

PCH Breaches the Amended Letter Agreement

19. During 2022, PCH delivered only 201,549,657 mailing packages to Jetson. PCH fell 8,450,343 mailing packages short of its contractual minimum for 2022.

20. During 2023, PCH delivered only 110,239,952 mailing packages to Jetson. PCH fell 110,238,952 mailing packages short of its contractual minimum for 2023.

21. On July 30, 2024, Jetson Mailers invoiced \$253,087.77 to PCH for its failure to meet its 2022 mailing package minimum.

22. On July 30, 2024, Jetson Mailers invoiced \$3,038,691.06 to PCH for its failure to meet its 2023 mailing package minimum.

23. PCH failed to pay the July 30, 2024 invoices.

24. Jetson Mailers has performed all of its obligations under the Agreement as amended to the extent it was permitted to do so.

WHEREFORE, Plaintiff Senior Midwest Direct, Inc., doing business as Jetson Mailers Mailers, requests that this Court enter judgment in its favor and against Defendant Publishers Clearing House, LLC as follows:

a. Awarding compensatory damages in an amount to be determined at trial;

- b. Awarding prejudgment interest through the date of judgment; and
- c. Granting such other and further relief as this Court may deem acceptable.

Senior Midwest Mailers, Inc.

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